

September 25, 2017

VIA ECF

The Honorable Magistrate Judge Jacqueline Scott Corley
USDC, Northern District of California San Francisco Courthouse
Courtroom F - 15th Floor
450 Golden Gate Avenue, San Francisco, CA 94102

Re: Waymo LLC v. Uber Technologies, Inc., et al.,
N.D. Cal. Case No. 3:17-cv-00939-WHA

Dear Magistrate Judge Corley:

Pursuant to Dkt. 1688 (9/18/2017 Hearing Tr. at 21:22-23:7), diligenced employee Colin Sebern submits this brief in opposition to Waymo's corrected brief on the Diligenced Employees' waiver of attorney-client privilege for materials provided to third party Stroz Friedberg ("Stroz") (docket 1746, "Waymo Brief").

Waymo claims that it is entitled to a ruling that Mr. Sebern has waived his attorney client privilege with respect to materials “handed over to Stroz.” Waymo’s analysis begins with its recitation of supposed “black letter law that the voluntary disclosure of privileged attorney-client communications to a third party waives the privilege,” citing *United States v. Palache*, 913 F.2d 1375, 1379 (9th Cir. 1990). Waymo Brief at 1. Therefore, according to Waymo, three of the diligenced employees – including Mr. Sebern – waived the privilege because they turned over their devices to Stroz and did not provide privilege logs. (Waymo Brief at 1, 3, 6).

But Waymo does not even attempt to assert that Mr. Sebern disclosed any privileged communications to Stroz. In fact, Mr. Sebern did not turn over any privileged materials to Stroz, provided no privilege log, and does not claim privilege with respect to any of the materials he turned over to Stroz, because he simply had no attorney-client communications in any of the material provided to Stroz. Obviously there can be no waiver of privilege if there was no disclosure of privileged material at all.

Waymo’s claim that the absence of a privilege log waives a privilege that never existed should be rejected.

Respectfully submitted,

By: /s/ David C. Brownstein

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cc (via ECF): All counsel of record
Special Master John Cooper